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**FILED**

March 14, 2007

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE  
LICENSE OF

KEVIN J. MALONEY, M.D.  
License No. MA50619

TO PRACTICE MEDICINE AND  
SURGERY IN THE STATE OF  
NEW JERSEY

Administrative Action

FINAL ORDER  
OF DISCIPLINE

This matter was opened to the New Jersey State Board of Medical Examiners (Board) upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made;

FINDINGS OF FACT

1. Respondent, Kevin J. Maloney, M.D., License No. MA50619, is a physician licensed in the State of New Jersey and has been licensed at all times relevant hereto.

2. On or about May 19, 1995, Respondent was found guilty by the State of New York, Department of Social Services (DSS), after an adjudicatory proceeding, of submitting false claims, and failure to maintain records that fully disclosed the necessity for, and the

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nature and extent of, services that Respondent ordered. Respondent was excluded from participation in the Medicaid program for five (5) years and ordered to make restitution in the amount of \$383,340.00, plus interest.

3. On or about November 21, 2000, the State of New York, Department of Health, State Board for Professional Medical Conduct (New York Board) issued a Statement of Charges wherein Respondent was charged with misconduct based on the DSS action taken against him on or about May 19, 1995. Specifically, Respondent was charged with misconduct under the laws of New York state, pursuant to New York Education Law §6530(2) (practicing the profession fraudulently); New York Education Law §6530(16) (willful or grossly negligent failure to comply with substantive provisions of federal, state or local rules governing the practice of medicine); New York Education Law §6530(21) (willfully making or filing a false report); New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient); and/or New York Education Law §6530(35) (ordering excessive tests or treatment not warranted by the condition of the patient). On or about February 23, 2001, a Hearing Committee of the New York Board issued a Determination and Order concluding that the action taken by DSS against Respondent constituted misconduct pursuant to New York Education Law §6530(32) and/or New York Education Law §6530(35). The Hearing Committee after taking into

consideration the mitigating factors in the record determined to take no disciplinary action against Respondent. The mitigating factors considered by the Hearing Committee included evidence that the incidents upon which DSS took action occurred 12-13 years ago, and that Respondent performed all the testing and services for which he billed. The Hearing Committee also considered the fact that Respondent made full restitution and had himself disclosed the violations on his license re-registration. Recent audits on the Respondent's practice revealed no problems. Following the entry of the Determination and Order by the Hearing Committee the New York Board petitioned the Administrative Review Board for Professional Medical Conduct for modification of the Determination and Order to assess some sanction against Respondent for his misconduct. After considering the hearing record and the submissions from the parties, the Administrative Review Board voted 4-0 to issue a sanction censuring and reprimanding Respondent for misconduct and on or about May 29, 2001, the Administrative Review Board entered a Determination and Order. Pursuant to the Determination and Order, the Administrative Review Board affirmed the Hearing Committee's determination that Respondent committed professional misconduct. The Administrative Review Board however, overturned the Hearing Committee's Determination to take no action against Respondent's license and issued a censure and reprimand. The Administrative Review Board found Respondent's misconduct serious, but agreed with

the Hearing Committee that the mitigating factors in this case demonstrated no need to impose a severe penalty against Respondent.

#### CONCLUSION OF LAW

1. The above disciplinary action taken by the sister state of New York provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(e), in that Respondent has engaged in professional misconduct.

#### DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline (POD) "reprimanding" Respondent was entered on May 16, 2006 and a copy served on Respondent. The POD was subject to finalization by the Board at 5:00 p.m. on the 30<sup>th</sup> business day following entry unless Respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons therefor.

In response to the POD, Respondent submitted written correspondences dated June 6, 13, 15, and 19, 2006 in which he requested a dismissal of the POD or in the alternative, a hearing. Respondent asserted in his response that he was unfairly treated by

Medicaid after he reported the abusive behavior of the auditor to Medicaid and the Attorney General. Respondent further claimed that upon review of the New York State disciplinary action, the Pennsylvania State Board of Medicine decided not to seek disciplinary action against him. Lastly, although Respondent offered proof of his reinstatement as a Medicaid provider with "full privileges", the New York State Department of Health has only confirmed Respondent's reinstatement on a limited basis.

Respondent's submissions were reviewed by the Board, and the Board determined that further proceedings were not necessary and that no material discrepancies had been raised. The Board was not persuaded that the submitted materials merited further consideration, as Respondent did not dispute the Findings of Fact or Conclusions of Law.

ACCORDINGLY, IT IS on this 14th day of March, 2007,  
ORDERED THAT:

1. Respondent shall be and is hereby reprimanded by the New Jersey State Board of Medical Examiners.

NEW JERSEY STATE BOARD OF  
MEDICAL EXAMINERS

By:

Sindy M. Paul, MD, MPH

Sindy Paul, M.D.  
Board President